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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MARYLAND**

**UNITED STATES OF AMERICA**

**vs.**

**CASE NO. 14-CR-00529-TDC**

**VADIM MIKERIN**

**Defendant.**

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**TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE THEODORE D. CHUANG  
FRIDAY, JANUARY 30, 2015; 10:05 A.M.  
GREENBELT, MARYLAND**

**FOR THE GOVERNMENT:**

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Proceedings recorded by mechanical stenography, transcript  
produced by computer.

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1 P R O C E E D I N G S

2 THE DEPUTY CLERK: The matter now pending before this  
3 Court is criminal action number TDC-14-CR-0529, the United  
4 States of America versus Vadim Mikerin. We are here for the  
5 purpose of a telephone status hearing. Counsel, please  
6 identify yourselves for the record.

7 MR. AKE: Good morning, Your Honor. For the  
8 Government, this is Adam Ake for the United States. I'm joined  
9 by Jim Crowell, also from the U.S. Attorney's Office, as well  
10 as Ephram Wernick from the Department of Justice, Fraud  
11 Section.

12 MR. LOPEZ: Jonathan Lopez, on behalf of Vadim  
13 Mikerin, along with Billy Jacobson.

14 THE COURT: Thank you very much. We're here for a  
15 status conference. Before I begin, I just want to let you know  
16 we are coming to you from the courtroom, and we also are joined  
17 today by a member of the public, who is actually from the  
18 Embassy of the Russian Federation. Mr. Sidorov is here  
19 observing at his request. So I want to let everyone know that  
20 he is here as a member of the public.

21 The last time we spoke, there was a request for more time  
22 to address some discovery issues, discovery issues in terms of  
23 providing materials already here, and then also some efforts  
24 being made to gain materials from other countries.

25 Mr. Ake, can you tell us where we currently stand now?

1           MR. AKE: Yes, Your Honor. So we did provide  
2 additional discovery on the charge that's included in the  
3 indictment and got that over last Friday, the 19th.

4           Then counsel wrote us a letter asking for some  
5 clarifications and some additional items. We had our own  
6 conference on that on Wednesday afternoon, and we've been  
7 addressing some of those issues and cobbling together some  
8 other materials.

9           Also, we're arranging for a physical evidence review for  
10 defense counsel at FBI's Washington field office, where  
11 physical evidence was seized during warrants that were executed  
12 in conjunction with Mr. Mikerin's arrest, as well as some  
13 arrests that were made on complaints of others, is stored.

14           It's the Government's position right now that we have  
15 satisfied our discovery obligations on Rule 16 materials that  
16 will be used by the Government during trial of the count that's  
17 charged in the indictment.

18           Defense counsel has requested some additional items.  
19 We're kind of looking at those case by case. They are asking  
20 for some early Jencks information, as well as some Giglio  
21 information. We agreed in our discovery agreement that we'll  
22 provide that a month before trial. We'll kind of look at it on  
23 a case-by-case basis, but our position is that we are complying  
24 with our obligations under our agreement, as well as our Rule  
25 16 obligations.

1           What else?

2           I have problems getting some additional materials that we  
3 have discussed, such as some more complete -- they asked for  
4 some pictures that were shown to Mr. Mikerin during his  
5 interview to compliment the audio recording, as well as the 302  
6 that's been provided with his statements during the interview.

7           And then we're going to be providing them some discovery,  
8 which probably not directly relevant to the extortion case, but  
9 we're going to make available to them all the electronic  
10 discovery with the electronic materials that were seized from  
11 the Tenam offices in October of 2014, when that was searched,  
12 even though the extortion case really ends in 2011 as it's  
13 charged right now.

14           So there is some ongoing investigation into other  
15 potential charges. As part of that, we are in the process of  
16 giving MLATs out. There's a lot of wending through various  
17 wickets, but that has to happen. That's part of the broader  
18 investigation though, Your Honor, and we're not going to rely  
19 on that to hold up trial.

20           If defendant wants to go to trial on the freestanding  
21 extortion case that's charged right now, we're not going to  
22 rely on those pending MLATs to use in trial on that particular  
23 charge, and we'd be ready to go to trial whenever the Court has  
24 time available.

25           THE COURT: I see. So just to clarify, because I

1 don't think I had this understanding last time, the attempts to  
2 gain information from other countries are related to potential  
3 new charges, not to the pending indictment.

4 MR. AKE: They could help shed light on where the  
5 funds were going, but they're not essential to proving the  
6 elements required by the extortion charge, Your Honor. So  
7 we're not going to -- we don't need it to go to trial. It  
8 would be nice, and it's probably relevant. If we get that  
9 information back, then we would plan to use it if we get it  
10 back in time, but we're not going to rely on dependency of  
11 those to hold up trial on this particular charge.

12 THE COURT: I see. So, Mr. Lopez, first of all, if  
13 you can just give me a sense of whether Mr. Ake missed anything  
14 or if you have a different view of anything. But also, if I  
15 recall, the last time we had said that once the Government  
16 produces discovery by around the 16th, which, apparently,  
17 they've come pretty close to doing, that you would request  
18 until mid March, March 13th to consider any potential motions  
19 arising from those materials. So let me know if that still is  
20 the schedule you'd like to follow.

21 MR. LOPEZ: Yes, Your Honor, thank you.

22 On the first question, the overview of discovery  
23 provided, Mr. Ake generally got it right. We are in dispute as  
24 to whether or not they're in compliance with Rule 16. We've  
25 asked for materials related to that broader investigation. We

1 think that those are relevant and material to preparing our  
2 defense, and we're hoping we can work through those issues with  
3 Mr. Ake.

4 As well as the Giglio material he referenced, related to  
5 the main witness of the extortion charge, basically, the only  
6 witness and the whole substance of the case, we're hoping to  
7 work through with Mr. Ake. The bulk of that stuff to get four  
8 weeks ahead of trial is not workable, but I think we can work  
9 through that with them.

10 So those are the only kind of added flavor to the  
11 discovery issues that I wanted to raise.

12 As far as the motions date of March 13th, we want to keep  
13 that schedule. I think we can hit that schedule. So we're  
14 good with it.

15 THE COURT: Okay.

16 MR. LOPEZ: Now, if we get additional discovery that  
17 leads us to believe that we need to extend that time frame,  
18 we'll discuss it with the U.S. Attorney's Office and alert the  
19 Court if necessary.

20 THE COURT: So does anyone have a sense at this point  
21 whether any motions that would be filed would either be  
22 dispositive in some fashion or would potentially lead to a  
23 guilty plea or some other resolution?

24 I ask, just given the nature of this case and the fact  
25 that the defendant is in detention right now, whether we should

1 be setting a trial date now or whether it's premature to do  
2 that.

3 MR. JACOBSON: Your Honor, hi. This is Billy  
4 Jacobson. We will be filing dispositive motions on the 13th,  
5 and we would ask the Court to set a trial date.

6 THE COURT: So actually -- well, Mr. Ake, do you have  
7 a view on whether we should set a trial date today?

8 MR. AKE: No objection, Your Honor. That's fine to  
9 put a mark on the wall.

10 THE COURT: Okay. I mean, to one extent, I think  
11 typically, if we're not sure this case is going to trial, I  
12 don't usually like to clutter up the calendar. So if you  
13 actually have motions you think will dispose of the case, then  
14 that sort of cuts against it. But again, given the situation  
15 we have with the defendant now, I think if the parties want to  
16 set a date, we can set a date.

17 Before we do that though, I understand I do have a  
18 pending motion to reconsider the detention issue, as well as a  
19 notice that the defense was planning to file a supplemental  
20 memorandum on that this month. Can anyone tell me the status  
21 of that?

22 MR. LOPEZ: Sure, Your Honor. This is Jonathan Lopez  
23 again. We're going to file something today on that point and  
24 informed the U.S. Attorney's Office as well.

25 THE COURT: Mr. Ake, you probably haven't seen it

1 yet, but can you tell me now whether you're going to want to  
2 have time to respond in writing to that?

3 MR. AKE: Oh, absolutely, Your Honor, we'll respond.

4 THE COURT: And then do we have a sense on whether  
5 we're going to need a hearing on that?

6 MR. LOPEZ: We're asking for a hearing, Your Honor.  
7 Jonathan Lopez again.

8 THE COURT: Okay. Well, we can try to at least pick  
9 a date for that now since we're here. I don't know how  
10 extensive the argument is. The standard is two weeks to  
11 respond to a motion. Does anyone have any sense whether that  
12 should be shorter or longer in this case?

13 MR. AKE: That's appropriate, Your Honor. This is  
14 Adam Ake. That sounds appropriate, Your Honor.

15 THE COURT: Okay. So if it's going to be filed  
16 today, then the Government's response will be due -- let me  
17 just pull up the calendar here -- the 13th of February.

18 Mr. Lopez and Mr. Jacobson, do you have a sense of  
19 whether you'll want to be able to reply in writing, or would  
20 you rather just go straight to the hearing at that point?

21 MR. LOPEZ: I think we'd want to reply but not need a  
22 ton of time to do that. So if we had four days to reply, and  
23 then have the hearing maybe two days after that.

24 THE COURT: Okay. Well, the 16th, I think, is a  
25 federal holiday. Don't know if that matters to you. So you



1 would be looking at filing sort of towards the end of the week  
2 of the 16th. So perhaps we could schedule a hearing for the  
3 week of the 23rd.

4           Unfortunately, I'm out of town all week that week for a  
5 training program.

6           MR. LOPEZ: What about the 19th or the 20th then?  
7 We'll just get our reply in before the hearing. How long would  
8 the Court want to have the reply before it held the hearing?

9           THE COURT: I honestly don't know the nature of what  
10 we're dealing with here, how much of this is just a factual  
11 discussion and whether there's legal theorys that are being put  
12 forth. So I couldn't tell you based on that right now.

13           MR. LOPEZ: It's not at all very different from what  
14 was filed before, so there's not a whole lot new there.

15           And, indeed -- now, I'm not sure if the Government really  
16 needs two weeks to file a response. They're not seeing  
17 anything new. They already know the one new thing that's in  
18 there. And so maybe we can shorten it on the Government's  
19 side, and we'll shorten our response time and compress it.

20           I'm also being mindful of if we're going to be able to  
21 get him out, we'd like to do that sooner rather than later.

22           THE COURT: No, I understand.

23           MR. AKE: Your Honor, this is Adam Ake for the  
24 Government. If the 20th is available for the Court, that would  
25 work for the Government. But we would like to have the full

1 time to respond, normal time, just because we didn't prepare a  
2 written response last time, so we don't have anything canned  
3 and ready to go. It sounds like the defense is just modifying  
4 their existing motion, but that was -- I think that was like a  
5 30-page motion, Your Honor. So we would like to have some time  
6 to prepare a response adequate to the task.

7 MR. LOPEZ: The 20th works for us as a final end  
8 date.

9 THE COURT: Why don't we do this. We can have a  
10 hearing on the 20th, perhaps in the morning at 10 a.m. Does  
11 that work for everyone?

12 MR. AKE: Yes, Your Honor.

13 MR. LOPEZ: Yes.

14 THE COURT: And could I get the reply by close of  
15 business on the 17th?

16 MR. LOPEZ: Yes.

17 THE COURT: Okay. Obviously, depending on the nature  
18 of this, we may be ruling at that point, or I may need to take  
19 it under advisement. I can't tell you right now. But I do  
20 understand the nature of a detention motion so, certainly, will  
21 not let this sit. We'll try to resolve it as quickly as  
22 possible, naturally. So that's the schedule for that motion.

23 And then we already have a schedule for pretrial motions  
24 to be filed by March 13th. I don't think we need to set a  
25 schedule right now because we don't know how many or what type

1 of motions it will be. But the default would be the Government  
2 would respond two weeks after that.

3 Isn't there also a pending suppression motion that hasn't  
4 been responded to?

5 MR. LOPEZ: Well, there is, Your Honor, but our  
6 understanding was it was sort of a placeholder, and we were  
7 planning to file another suppression motion on March 13th  
8 that's more substantive, and we'd expect the Government would  
9 respond to that.

10 THE COURT: Right. Am I correct the parties agree  
11 there's no need to respond to the current motion until after  
12 the March 13th date; is that correct?

13 MR. LOPEZ: Yes, Your Honor.

14 MR. AKE: Yes, Your Honor.

15 THE COURT: So as of March 13th, I think the default  
16 will be the Government will respond in two weeks. If it turns  
17 out there's seven motions and the Government needs more time,  
18 then hopefully you can jointly agree on something or the  
19 Government can file a motion for more time at that point.  
20 Unless anyone sees any other reason to extend the briefing  
21 schedule now.

22 MR. JACOBSON: This is Mr. Jacobson. We don't, Your  
23 Honor.

24 MR. AKE: No, Your Honor. Thank you.

25 THE COURT: I didn't catch the first comment. Are

1 both sides fine leaving it the way it is right now?

2 MR. JACOBSON: Yes.

3 MR. AKE: Yes, Your Honor. This is the Government.

4 THE COURT: Okay. Well, then the next step would be  
5 a trial date. First of all, with respect to the motions, we're  
6 anticipating, you said, perhaps a suppression motion or a  
7 revised suppression motion.

8 Are there other motions that you can tell us, generally,  
9 what they are now, in terms of having a sense of what needs to  
10 be resolved prior to trial and what sort of can bump up on the  
11 eve of trial?

12 MR. JACOBSON: Well, I think we'll probably file a  
13 dispositive motion relating to the sufficiency of the  
14 indictment.

15 Hopefully, we won't have any discovery type motions to  
16 file because we'll be able to work things out with the  
17 Government sufficiently before then, but we'll leave that  
18 possibility open.

19 THE COURT: Okay, so I imagine on the sufficiency of  
20 the indictment, the Government will certainly want to brief  
21 that.

22 You're not sure of any evidentiary issues right now, it  
23 sounds like.

24 So when would the parties think would be appropriate for  
25 a trial generally, both in terms of having the case prepared,

1 and then we can talk about calendars for individual counsel and  
2 for the Court.

3 MR. JACOBSON: Your Honor, this is Billy Jacobson.  
4 We would request a date on or about June 1st, obviously,  
5 keeping the Court's calendar in mind.

6 THE COURT: Does the Government have a view on that?

7 MR. AKE: Your Honor, generally, the timing works.  
8 It's just I have a personal conflict. My wife is due with our,  
9 admittedly, fourth child in May. So it's not as much of an  
10 emotional event as the first couple but --

11 THE COURT: They're all important, aren't they,  
12 Mr. Ake? You're on the record.

13 MR. AKE: The drama goes down after the first one.

14 MR. LOPEZ: Mr. Ake, as someone with four children, I  
15 can assure you you might not even know the new one's name.

16 THE COURT: I'm sorry, Mr. Ake. I didn't catch the  
17 dates that might be a problem.

18 MR. AKE: My wife's due May 27th, Your Honor. So  
19 that's the only issue.

20 MR. WERNICK: Your Honor, this is Ephram Wernick from  
21 DOJ. I have a trial scheduled in May, that may run to the end  
22 of May. So I'm generally okay in June as well, but perhaps mid  
23 June would work better.

24 THE COURT: How long do we think this trial would  
25 last?

1 MR. AKE: Your Honor, this is the Government. I  
2 think four days, at most, on this particular -- depending on  
3 the length of the defense case, but I think the Government's  
4 case will be two full days, maybe spilling into a third.

5 MR. LOPEZ: It's hard for us to estimate what our  
6 defense case would be at this point, Your Honor, to be honest.  
7 I don't think we're talking about a three-week defense case. I  
8 don't know if it's a two-day defense case or a seven-day  
9 defense case.

10 THE COURT: So should we block this as a two-week  
11 trial or more or less?

12 MR. LOPEZ: I think two would be safe from the  
13 defense perspective.

14 THE COURT: Well, let me look at the calendar now.  
15 Well, let's see. So May is not good, I think, for at least one  
16 of the counsel.

17 The first week of June is okay for me, although I know  
18 that it's not great for Mr. Ake.

19 And then the first half of the following week, there's  
20 a -- I'll be out of town for a Fourth Circuit activity.

21 So it would either be starting the second week on a  
22 Thursday, which is not ideal, or going to the following week.  
23 If we started on the 16th though -- or if we started the trial,  
24 let's say, on that Thursday, we have the week of the 16th. But  
25 then, I think as Mr. Ake knows because it's his case, we have a

1 case on the 23rd.

2 MR. AKE: Yes, Your Honor. I'm positive that's going  
3 to go to trial.

4 THE COURT: Yeah, we've talked about that one.

5 MR. LOPEZ: I think that would be tough, Your Honor,  
6 to maybe squeeze that in if you're sure this case on the 23rd  
7 is going to go to trial.

8 THE COURT: Yeah, I wouldn't want to have us start on  
9 the 16th. It sounds like if we started the Thursday before,  
10 we'd still not feel totally comfortable we'd be done.

11 So I think the options -- it sounds like none of these  
12 are great for everybody. One would be to start on June 2nd and  
13 then take a break, after the first week, until Thursday the  
14 11th. And that's right after Mr. Wernick's trial and right  
15 after or around the time of the birth of the child.

16 The other option would be to go into July, which is  
17 generally okay for me. Obviously, probably Mr. Ake would want  
18 some time between the two trials, at least some period of time.

19 I could also do earlier in May or possibly April, but I  
20 don't know if people think that you'll be ready by then.

21 MR. AKE: Your Honor, from the Government's  
22 perspective, if we try this alone, it's not a hugely complex  
23 case. There's not that many witnesses. I mean, we could go  
24 mid July if that works for the Court.

25 MR. LOPEZ: I'm sorry, Judge. Our concern is with

1 our detained defendant -- client, rather. And so mid July, I'm  
2 just not super comfortable with mid July for that reason and,  
3 really, for that reason only.

4 We'd be more inclined -- I know there's issues with this  
5 with Mr. Ake's pregnancy or his wife's pregnancy, but we'd be  
6 more inclined to shift it back into May.

7 THE COURT: You're more inclined to do what? I'm  
8 sorry.

9 MR. LOPEZ: To shift it back into May, as you  
10 suggested.

11 THE COURT: Well, I know that Mr. Wernick has an  
12 issue. Remind me again what your schedule is.

13 MR. WERNICK: Your Honor, I have a trial set in on  
14 May 4th in Orlando, and that will take, I think realistically,  
15 at least two weeks. It's scheduled for four. It won't go  
16 four. But it is on the schedule for four at the moment. So  
17 May is difficult for me.

18 MR. AKE: Your Honor, how does the Court's calendar  
19 look the second half of April?

20 THE COURT: Well, we have a two-week trial starting  
21 on the 21st, although that one -- it's a criminal case.  
22 Ms. Johnston has it. You can talk to her about that. I don't  
23 think that's a firm trial. We scheduled it because we think  
24 it's a realistic possibility, but I don't think it's firmly  
25 going to be a trial.



1           The week of 14th is available but, again, it bumps up  
2 against that.

3           We could double book for the 21st because I think that's  
4 not a sure thing. It does create some uncertainty, of course,  
5 which no one likes.

6           MR. WERNICK: Your Honor, I'll make myself available  
7 for the Court and for this trial. That being said, it is a  
8 fairly complex case, a security fraud case that I'm trying on  
9 May 4th. It's something I had planned the last two weeks of  
10 April to be in Florida --

11           THE COURT: No, I understand. And you said May 18th,  
12 your other trial is probably still going?

13           MR. AKE: Your Honor, you're speaking to Mr. Wernick,  
14 right?

15           THE COURT: Yes.

16           MR. WERNICK: Oh, I'm sorry, Your Honor. May 4th is  
17 the trial date.

18           THE COURT: Right, and I think you said it would be a  
19 two-week trial.

20           MR. WERNICK: Well, it's on the books for a four-week  
21 trial. Since then, one person has pled, so I think we can at  
22 least cut off a week. I was saying two weeks is being very  
23 optimistic, but it will be at least two weeks.

24           MR. JACOBSON: Your Honor, this is Bill Jacobson. If  
25 I can, just because this is obviously proving difficult,

1 another thing to factor is this ongoing investigation and the  
2 likelihood of a superseding indictment that would maybe negate  
3 this trial date we're trying to come up with.

4 So I wonder if we could maybe, perhaps, get some more  
5 clarity from the Government on the likelihood of that happening  
6 before these dates that we're throwing around.

7 THE COURT: Good point. Mr. Ake?

8 MR. AKE: Your Honor, I think a superseding  
9 indictment before May may happen but I -- you know, I don't  
10 want to promise it and then not deliver and hold up this trial.  
11 They are different facts. It's going to be different  
12 witnesses.

13 So it may make sense -- again, part of this may just be  
14 how the detention hearing comes out. If it goes their way,  
15 that may reduce their desire to go forward immediately on this  
16 trial and then --

17 MR. WERNICK: I would just say on behalf of the  
18 Department of Justice, Your Honor, obviously, with the ongoing  
19 investigation, we can only say so much. We are working and we  
20 are -- I would say at some point I believe we'll have evidence  
21 sufficient to bring a new indictment. I don't know, time wise,  
22 whether that's going to be before -- if we're looking at April,  
23 then that would be possibly difficult, though I wouldn't say  
24 impossible.

25 And only -- and, obviously, we are very much interested

1 in keeping Mr. Mikerin detained for the reasons that are  
2 already on the record. So we're obviously not conceding any of  
3 that for the purpose of moving a trial date up.

4 But it's obviously hard to answer that question without  
5 revealing material that's part of the investigation at this  
6 stage. We possibly could have an offline discussion ex parte  
7 if we were trying to get into some materials the Court would be  
8 interested in, but at this stage, I think that's the best  
9 answer we can probably give.

10 THE COURT: Okay. Well, right now I see two options.  
11 We can always, if, after the detention hearing, if he remains  
12 detained and there's an eagerness to move forward earlier, we  
13 can revisit whether things have changed on my calendar and  
14 other calendars for counsel.

15 But why don't we choose between -- I think the only  
16 options I see right now are June 2nd, with the weakness of that  
17 being that the second week wouldn't start until the 11th, and  
18 if people find that to be problematic, I would understand that.  
19 Or July 14th.

20 MR. AKE: Your Honor, for the Government, July 14th  
21 is our preference.

22 MR. LOPEZ: The defense preference is June 2nd, Your  
23 Honor.

24 THE COURT: So what, if any, difficulties do people  
25 see with a three-day break in the middle of the trial?

1 MR. AKE: Your Honor, for the Government, it's not a  
2 difficulty with the break. It's more of a preparation  
3 difficulty with -- you know, Mr. Wernick and I are both going  
4 to have conflicts for different reasons the week or two leading  
5 up to that date. So that's the bigger issue for the  
6 Government.

7 THE COURT: So it's primarily going to be the two of  
8 you?

9 MR. AKE: Yes, Your Honor.

10 THE COURT: Mr. Crowell is not really directly  
11 involved in the trial, you don't expect?

12 MR. CROWELL: Judge, this is Jim. I don't see the  
13 need to put three trial lawyers on this small a case. If we go  
14 to the bigger superseding case and we end up trying a larger  
15 case, if they revisit that. Frankly, two trial lawyers seems  
16 too large for the Government --

17 THE COURT: No, I understand. I just wanted to make  
18 sure I knew who was involved.

19 Well, why don't we -- I'm not a huge fan of breaking  
20 things up in the middle if we don't have to. So let's set it  
21 down for the 14th of July.

22 I would appreciate, since, again, I think the detention  
23 issue -- I don't really know the issues at all. So again, we  
24 can look and see if calendars have changed by the time that  
25 proceeding ends. So I would ask if the parties could keep --

1 refrain from adding things into May and June, if possible.  
2 Because if certain things clear, cases settle or plead out,  
3 things may open up for all of us.

4 So why don't we start with the 14th for now, and then  
5 we'll address it further if it warrants further discussion  
6 later.

7 MR. AKE: Thank you, Your Honor.

8 MR. WERNICK: Yes, Your Honor.

9 MR. LOPEZ: Thank you, Your Honor.

10 THE COURT: Anything else that we should discuss  
11 today?

12 MR. LOPEZ: Not from the defense, Your Honor.

13 MR. AKE: No, thank you, Your Honor. Appreciate it.

14 THE COURT: So why don't we -- again, just to recap,  
15 we're expecting defense motions on -- well, we're expecting the  
16 detention brief today. The Government has two weeks to  
17 respond. The defense will reply by the 17th, and we'll have a  
18 hearing on the 20th at 10 a.m.

19 The defense's pretrial motions are due on March 13th,  
20 with the standard briefing schedule following that, unless  
21 there's a need to change that, which we can address once we  
22 know what the motions are.

23 We have a trial date right now of July 14th, blocking out  
24 two weeks. Again, we can revisit those issues as we get  
25 closer.

1 Anything else that we decided or discussed today?

2 MR. LOPEZ: Just one thing, Your Honor. This is  
3 Jonathan Lopez. Can the March 13th date be reciprocal motions?  
4 I don't know if the Government is planning on filing any  
5 pretrial motions, but it would seem sufficient if they're all  
6 kind of traded.

7 THE COURT: I'm sorry, what did you want to have on  
8 the 13th?

9 MR. LOPEZ: Any Government motions filed.

10 MR. AKE: That's fine, Your Honor. If there's any  
11 Rule 12 motions, we'll file them by then.

12 THE COURT: Well, are we talking about things like  
13 404(b) at this point, or is that something we should do later?

14 MR. LOPEZ: This is Jonathan Lopez again. We  
15 understand the Government has said that they are not  
16 introducing any 404(b) or inextricably intertwined evidence.  
17 But if they have other motions of a pretrial nature -- I don't  
18 want to put any ideas in their head, but motion to exclude or  
19 prevent argument or those kind of things.

20 MR. AKE: Well, Your Honor, motions in limine usually  
21 aren't Rule 12 pretrial motions. At least the practice that  
22 we've got is to file those right up through and continuing  
23 during trial as appropriate.

24 We can give 404(b) notice by March 13th, but I wouldn't  
25 expect the Court to rule on it until, typically, during trial,

1 depending on how things are proceeding and once the Court has a  
2 better understanding of how those particular items, if they are  
3 404(b), should be resolved. A lot of times they don't become  
4 clear until trial.

5 THE COURT: No, I agree. I think having notice by  
6 then of what you currently have available, whether you plan to  
7 use would be a good idea. I assume Mr. Lopez would want that;  
8 is that correct?

9 MR. LOPEZ: Your Honor, I'm a little confused on  
10 that. We had a conversation the other day where they said they  
11 were not using 404(b), and they had a self-imposed deadline of  
12 last Friday to tell us whether or not they would. Now it  
13 appears that they may is a bit confusing though.

14 THE COURT: Well, I don't know if it necessarily -- I  
15 imagine they don't want to completely foreclose -- I think  
16 sometimes, as you're putting your case together, you may notice  
17 something. So I don't necessarily view that as indicating that  
18 everything has changed, unless the Government will tell us that  
19 it did.

20 MR. CROWELL: Well, Your Honor, I just got notice  
21 that Mr. Ake accidentally hung up his phone. So you may want  
22 to reconnect him.

23 But I can say I was part of that call, and I understand  
24 there were discussions about 404(b) as it relates to discovery  
25 and the broader investigation and had explained to defense

1 counsel, basically, to the extent that they were seeking any  
2 material or 404(b) with that, we were not intending to  
3 introduce the broader investigative -- generally, that kind of  
4 material. So I do agree that we have said that.

5 But like you said, Your Honor, as we develop and prepare  
6 for trial, we might come across other information that we may  
7 want to bring in. So the March 13th date, if that's the date  
8 to inform defense counsel, given the four months to prepare for  
9 trial at that stage, I think that's appropriate.

10 I would ask at this stage if there is a way to dial  
11 Mr. Ake back in. He just did e-mail me to let me know. So I  
12 can try to conference him myself, but I don't --

13 MR. LOPEZ: That's fine for us, Your Honor, by the  
14 way, both conferencing back in and the March 13th date. We may  
15 not need to actually conference him back in if that's the end  
16 of it.

17 MR. CROWELL: I appreciate that. If Your Honor is  
18 okay with it, it probably will take just a moment. I can call  
19 him right back --

20 THE COURT: Is it easier for us to do that or not?  
21 I'm not sure. To dial in somebody who was disconnected?

22 THE COURTROOM DEPUTY: We could, Your Honor.

23 THE COURT: Can you conference him in now?

24 MR. CROWELL: His desk number, I believe, is 301 --

25 THE COURTROOM DEPUTY: I don't know if I can get him



1 in now since we're already --

2 MR. CROWELL: I might be able to do it pretty  
3 quickly, Your Honor.

4 THE COURT: Why don't you try it then.

5 MR. CROWELL: Thank you. Okay. Okay, I've got  
6 Mr. Ake on the line. Is everyone else here?

7 THE COURT: Yes, we're here from the court.

8 MR. AKE: Your Honor, I apologize. I hit the wrong  
9 button while I was trying to do something.

10 THE COURT: I've done that before. Sometimes if the  
11 button is red, there's a temptation to push it even if it's not  
12 the right one.

13 So I think we all agree that any 404(b), there will be  
14 notice provided by March 13th. But I agree with Mr. Crowell  
15 that any motions in limine can be filed later, in part because,  
16 as I understand, defense is only going to get certain materials  
17 at this point, I guess a month before trial, Jencks and  
18 otherwise, so there could be some issues with that.

19 I think with the trial date set, I will send out sort of  
20 a pretrial schedule, try to figure out a pretrial conference,  
21 if we need one.

22 And then also -- I would prefer, even though it's correct  
23 that sometimes these motions can't be resolved until the middle  
24 of trial, that to the extent there's knowledge of any  
25 evidentiary motions, that I'd like to have a schedule in the

1 weeks leading up to the trial to have any written filings  
2 submitted in advance. And so I think motions in limine on  
3 pieces of evidence can be saved until that time and not  
4 necessarily filed by March 13th.

5 MR. AKE: Your Honor, I agree that's appropriate,  
6 particularly if it gets -- I think the Court certainly is well  
7 within it's discretion to set some limits on motions to  
8 exclude. And certainly, if the Government has any, we would  
9 file those promptly after any Giglio materials are provided.

10 THE COURT: Right. I'm just envisioning a few weeks  
11 before trial having a date for both sides to file either  
12 motions to exclude or motions for a pretrial ruling to include  
13 or to admit pieces of evidence. And so, again, those don't  
14 need to be addressed by March 13th.

15 I think that's all for today. Anything else we  
16 should discuss?

17 MR. LOPEZ: Not from the defense, Your Honor.

18 MR. CROWELL: No, thank you, Your Honor.

19 THE COURT: Thank you very much.

20 (The hearing concluded at 10:45 a.m.)  
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## 1 CERTIFICATE OF OFFICIAL REPORTER

2  
3 I, Cindy S. Davis, Federal Official Court Reporter in and  
4 for the United States District Court for the Southern District  
5 of Maryland, do hereby certify that I reported, by machine  
6 shorthand, in my official capacity the proceedings had and  
7 testimony adduced upon the motions hearing in the case of  
8 United States of America versus Vadim Mikerin, 14-cr-0529-TDC,  
9 in said court on the 30th of January, 2015.

10 I further certify that the foregoing 26 pages constitute  
11 the official transcript of said proceedings as taken from my  
12 machine shorthand notes to the best of my ability.

13 In witness whereof, I have hereto subscribed my name this  
14 5th of February, 2015.

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